Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

IN RE: ROBERT M. BATTLE

**On Petition For Writ Of Mandamus
From The United States Court Of Appeals
For The Fifth Circuit**

PETITION FOR WRIT OF MANDAMUS

ROBERT M. BATTLE, Pro Se
9910 Long Point Road
Houston, Texas 77055
(713) 932-0032

QUESTIONS PRESENTED FOR REVIEW

1.) Can a Citizen of the United States of America be denied his constitutional and legal right to meaningful access to the courts, along with his broader right to petition the government for a redress of his grievances?

2.) Can a Citizen of the United States of America be denied a de novo review by a Federal Appellate Court from an Order of Summary Judgment from a U.S. District Court?

PARTIES TO THE PROCEEDING

The Parties to the proceeding are:

Robert M. Battle

Robert M. Battle, trustee of KTW Group

United States of America

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CITATIONS OF REPORTS OF OPINIONS ENTERED IN THE CASE

Fifth Circuit Panel Order Affirming Order of the U.S. District Court.

JURISDICTION

This Honorable Court has jurisdiction to issue extraordinary writs under 28 U.S.C. § 1651(a) and U.S. Supreme Court Rule 20, (especially) "except in certain narrowly defined circumstances" where extreme violations have occurred.

CONSTITUTIONAL PROVISION INVOLVED IN THE CASE

Constitution of the United States of America, First Amendment right to petition the Government for redress of grievances clause and due process right clause of the Fifth Amendment.

STATEMENT OF FACTS

The Petitioner filed an action in State District Court to remove an illegal IRS lien on property owned by KTW Group. The IRS or government removed the action from State Court to the Federal District Court in Lufkin, Texas. In addition, the IRS or government filed a Counter-Claim requesting a foreclosure of the

IRS lien. Later, the IRS or government filed a Motion for Summary Judgment which was granted by the U.S. District Court. The Petitioner filed timely Motions for Reconsideration which were denied. (See App. 2.)

The Petitioner then filed a timely Notice of Appeal to the Fifth Circuit Court of Appeals. The Three (3) Judge Panel of the Fifth Circuit summarily dismissed the appeal without a de novo review and with a caution or warning to not file any other pleadings in federal courts.

The Petitioner files this Petition for Writ of Mandamus to correct the illegal order of the Fifth Circuit Court of Appeals.

STATEMENT OF ISSUES

1.) Whether the Fifth Circuit Panel erred when the Petitioner was ordered not to file any pleadings in any Federal Courts.

2.) Whether the Fifth Circuit Panel erred when they did not review the District Court Summary Judgment Order de novo.

STATEMENT OF RELIEF SOUGHT BY PETITIONER

By this Petition for Writ of Mandamus, the Petitioner seeks an order from this Honorable Court directing the Fifth Circuit Court of Appeals to abate

their order not to file any pleadings in any Federal Courts; and to review the Appeal from the District Court on a de novo basis.

REASONS WHY THE WRIT SHOULD ISSUE

1.) *Right of Access to the Courts*

There is a fundamental constitutional right of access to the courts. *Bounds v. Smith*, 430 U.S. 817 (1977). Also, the Petitioner has a right to bring a claim based on deprivation of the right to petition for redress of grievances concerning filing materials in court. *Hunter v. Heath*, 95 F.Supp.2d 1140 at 1149 (D. Or. 2000); *Rizzo v. Dawson*, 778 F.2d 527 at 531 (C.A.9 Cal. 1985). Further, the Petitioner has a First Amendment right to meaningful access to the courts. *Hunter v. Heath*, supra at 1149; *Bradley v. Hall*, 64 F.3d 1276 at 1279 (C.A.9 Or. 1995).

The Honorable Three (3) Judge Panel of the Fifth Circuit erroneously and illegally ordered that, " . . . the clerks of all federal courts in the Fifth Circuit refuse to accept any pleadings whatsoever from Battle in any way arising from or connected with the underlying subject matter of this action." Additionally, the Panel stated, " . . . further related filing prohibited; sanctions warning issued." These rulings by the Panel are contrary to fundamental and foundational legal principles and rule of law that have been part of our legal system in the United States of America for centuries.

In addition, the Appellate Panel and the lower District Court cannot issue an order that Battle refrain from filing a motion for reconsideration or other relief.

This Honorable Fifth Circuit has ruled that,

> "We notice that the district judge in this matter, like some other district judges in this circuit (5th), has the custom of usually, or even always, prohibiting litigants from filing motions for reconsideration or relief, such as contemplated by [FRCP] 59 and 60. *No judge has that authority. Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496 at 502 (5th Cir. 2000); *O'Connor's Federal Rules – Civil Trials 2002*, p. 636." (Emphasis added.)

Collins, supra, continues by stating that,

> *"Accordingly, we direct the judge in this case, and others in this circuit, to entertain post-judgment motions as contemplated by the rules. Moreover, the district courts must carefully consider each such motion on its merits, without begrudging any party who wishes to avail himself of the opportunity to present such motions in accordance with the rules of procedure and with the standards of professional conduct."* (Emphasis added.)

2.) The Honorable Fifth Circuit Court did not even attempt a de novo review even though other Fifth Circuit and other Circuit Court Panels have done de novo reviews of grants of summary judgment. A grant of summary judgment is reviewed do novo. *Perez v.*

United States, 312 F.3d 191 at 193 (5th Cir. 2002); *Jones v. C.I.R.*, 338 F.3d 463 (5th Cir. 2003). Other circuits have done de novo reviews of grants of summary judgments: *Huff v. U.S.*, 10 F.3d 1440 (9th Cir. 1993); *In re Galletti*, 298 F.3d 1107 (9th Cir. 2002); *Singleton v. U.S.*, 128 F.3d 833 (C.A.4 1997); *Clark v. U.S.*, 63 F.3d 83 (C.A.1 1995); *O'Bryant v. U.S.*, 49 F.3d 340 (C.A.7 1995).

Several other legal and fact issues remained that should have gone to trial for determination concerning, but not limited to:

1.) Double taxation of the same income for the same tax years.

2.) The illegal use of "whipsaw" assessments.

3.) Bogus "Quick Assessments" were made that do not legally exist.

4.) No notices of deficiency were issued for the "Quick Assessments."

5.) State law controls in determining the nature of the legal interest of the taxpayer, not Federal law.

6.) The extinguishment clause of the Texas Fraudulent Transfer Act – Ch. 24 forecloses any and all liens on property of KTW Group.

7.) There were stays on all collections due to the stays from the CDP IRS Appeal and U.S. Tax Court cases still in existence.

These issues were fully briefed in Petitioner's Opening Brief and Reply Brief that were filed with the lower Fifth Circuit Court of Appeals but were apparently not even considered by the Three (3) Judge Panel.

CONCLUSION

The Petitioner's Petition for Writ of Mandamus challenges the Appellate Court's Order which must be vacated. The Order illegally denies the Petitioner the meaningful access to the Courts and disregards the proper standard of review being de novo.

THEREFORE, IT IS Prayed that Battle's Petition for Writ of Mandamus be granted.

Respectfully submitted,

ROBERT M. BATTLE,
individual and trustee
9910 Long Point Road
Houston, Texas 77055
(713) 932-0032

Counter Defendant

Robert M Battle represented by
Trustee **Robert M Battle**
(See above for address)
PRO SE*

Date Filed	#	Docket Text
03/12/2007	*27*	FIRST SUPPLEMENTAL OBJECTION to *24* Report and Recommendations by Robert M Battle. (djh,) (Entered: 03/12/2007)
03/12/2007	*28*	SECOND SUPPLEMENTAL OBJECTION to *24* Report and Recommendations by Robert M Battle. (djh,) (Entered: 03/12/2007)
03/14/2007	*29*	ORDER ADOPTING REPORT AND RECOMMENDATIONS for *24* Report and Recommendations and granting *19* Motion for Summary Judgment. Ordered, adjudged and decreed that (1) Robert M. Battle is indebted to the United States for federal income tax, penalties and interest for the years 1996, 1997 and 1998 in the amount of $598,036.94, plus statutory accruals since the time of assessment; (2) KTW Group is holding the Tyler County properties merely as a nominee in favor of Robert M. Battle; (3) the United States' federal

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* *Battle v. U.S.*, United States District Court, Eastern District of Texas, Lufkin Division, No. 9:06-CV-109.

		tax liens have attached to the Tyler County properties; (4) the Tyler County properties are property of Robert M. Battle; and (5) the United States may enforce its federal tax liens against such properties and sell these properties. The complaint is DISMISSED with prejudice and any motion notpreviously ruled on is DENIED. Signed by Judge Ron Clark on 3/14/07. (kjr,) (Entered: 03/15/2007)
03/14/2007	*30*	FINAL JUDGMENT that this action is dismissed. Signed by Judge Ron Clark on 3/14/07. (kjr,) (Entered: 03/15/2007)
03/26/2007	*31*	MOTION for Reconsideration re *30* Judgment, *29* Order Adopting Report and Recommendations by Robert M Battle. (kjr,) (Entered: 03/27/2007)

* * *

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 07-40644
Summary Calendar

ROBERT [M.] BATTLE,
As Trustee of KTW Group

Plaintiff-Appellant

v.

UNITED STATES OF AMERICA
(Internal Revenue Service)

Defendant-Appellee

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Appeal from the United States District Court
for the Eastern District of Texas
(9:06-CV-109)

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(Filed Feb. 8, 2008)

Before WIENER, GARZA, and BENAVIDES, Circuit Judges.

PER CURIAM:*

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* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Plaintiff-Appellant is not an attorney, but a physician who purports to appear *pro se* as Trustee of an entity that he has labeled the KTW Group. *This appeal is not from the district court's substantive judgment but from an Order signed June 6, 2007 and entered June 7, 2007, denying Battle's third motion for reconsideration*, or in the alternative, a motion to dismiss under Rule 60(b). Like the underlying litigation in this case, Battle's motion for reconsideration is wholly without merit, as is this appeal, so the Order appealed from is AFFIRMED.

Further, the district court determined that Battle's litigation is multiplicitous and harassing, and ordered the Clerk of that court not to accept any further motions for reconsideration and to return any such pleadings and filings. *We affirm that ruling as well and add that the Clerk of this court and the clerks of all other federal courts within the geographical jurisdiction of this court, refuse to accept any pleadings whatsoever from Battle in any way arising from or connected with the underlying subject matter of this action. Moreover, Battle is cautioned that any further attempts on his part to delay the foreclosures sought by the Internal Revenue Service or otherwise to prolong or delay this litigation shall result in the imposition of sanctions from this court.*

Finally, Battle is reminded that *he may proceed in federal court pro se only as to matters in which he is a litigant individually,* not in a representative capacity of any other person or entity. As a non-lawyer, he may not appear, *pro se* or otherwise, as the

legal representative of any other party, even one that is or may be deemed to be merely a nominee of his. As with any further contumacious prolongation of these proceedings, any further effort of Battle to appear *pro se* other than strictly in his own right shall expose him to sanctions.

AFFIRMED; further related filings prohibited; sanctions warning issued.